



**REFERENCE:** 14/1/1/E2/4/2/3/0319/17

**ENQUIRIES:** Fahd Said

**BY EMAIL**

[Nick@posthousewines.co.za](mailto:Nick@posthousewines.co.za)

Mr N Gebers

Gerbers Estate

P O Box 5635

Helderberg

7135

## **DIRECTIVE**

Dear Sir

### **DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998**

1. The Department's Pre-Compliance Notice dated 14 September 2017 and Rehabilitation Plan dated November 2018, has reference.
2. Having considered your representations, I, Dr Eshaam Palmer, in my capacity as Director: Environmental Law Enforcement, hereby issue Mr. N Gebers with a

Directive in terms of section 28(4) of the National Environmental Management Act, 1998 ("NEMA") which approves the rehabilitation plan.

3. This Directive relates to non-compliance with section 28(1) of the NEMA and to implement the approved rehabilitation plan for the commencement of a listed activity in terms of the NEMA.

### Details of conduct constituting non-compliance

4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA"), a site inspection was conducted at Erf 165, Raithby, Stellenbosch, by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 15 July 2017 and it was confirmed that you have commenced with the alleged illegal clearing of indigenous vegetation and earth moving works within a watercourse to construct a dam without environmental authorisation.



Aerial map: Location of alleged illegal activity.



Photo 1: Removal of soil from the in-stream dam.

5. Section 28(1) of the NEMA provides that every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.
6. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

**7. You are hereby directed to:**

- 7.1 Immediately Implement the remediation measures as outlined in the approved rehabilitation plan dated November 2017 within **14 (fourteen) calendar days** from the date of receipt of this notice.

- 7.2 Appoint a suitably qualified Environmental Control Officer (ECO) to supervise all rehabilitation work undertaken and monitor compliance during and post completion of the rehabilitation.
- 7.3 Submit an audit report by **30 September 2019**, which assesses the effectiveness of the remediation measures implemented.
8. In light of the above, you must take the necessary remedial / mitigation measures at your own cost.

### **Offences and penalties, including failure to comply with this Directive**

9. In terms of section 49A(1)(e) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission which causes significant pollution and/or degradation of the environment or is likely to cause significant pollution and/or degradation of the environment.
10. According to section 49A(1)(f) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission detrimentally affects or is likely to detrimentally affect the environment.
11. A person convicted of the above offences is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
12. In terms of section 49A(1)(g) of the NEMA failure to comply with a Directive is an offence. A person convicted of failing to comply with a Directive is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
13. Furthermore, in terms of section 28(7) of the NEMA, if you fail to comply or inadequately comply with this Directive, the Provincial Head of Department

may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.

14. In terms of section 28(8) of the NEMA, the Provincial Head of Department may recover costs for reasonable remedial measures undertaken to remedy the situation from, amongst others, you.

### **Appeal against this Directive**

15. You may appeal against the decision to issue this Directive to the Minister of Local Government, Environmental Affairs and Development Planning ("the Minister") within **30 (thirty) calendar days** from the date of receipt of this Directive.

16. The appeal must be in writing on the form obtainable from the Appeal Administrator, Mr Jaap de Villiers, at the contact details below and must be accompanied by a statement detailing the grounds for the appeal and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental  
Affairs and Development Planning  
Private Bag X9186  
CAPE TOWN  
8000

By facsimile: (021) 483 4174

By hand: Attention: Jaap de Villiers (Tel: 021 483 3721)  
Room 809  
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@westerncape.gov.za)

17. For purposes of electronic database management, you are requested to submit an electronic copy (Microsoft Word format) of the appeal form and any supporting documents.

18. The appeal form as well as assistance regarding the appeal procedure is obtainable from the Appeals Administrator.



**Dr E Palmer**

**Director: Environmental Law Enforcement**

**Date:** 4/5/2018

**Cc:**

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